



INTERCOUNTRY ADOPTION

Frequently Asked Questions: On Outgoing/Emigrating Convention Cases for U.S. Citizens Residing Abroad

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1. Q: How do you determine whether the Convention applies in a case involving U.S. citizen prospective adoptive parent(s) residing abroad who seek to adopt a child resident in the United States?

This FAQ concerns U.S. citizens living abroad in another Convention country who plan to adopt a child resident in the United States and return with that child to their residence abroad. Under the Intercountry Adoption Act of 2000, the Convention applies to “an adoption of a child resident in the United States by an individual residing in another Convention country.”

The Department of State generally considers a U.S. citizen residing in Convention countries to be habitually resident in the United States if the US citizen is domiciled in the United States or will be returning to establish a domicile in the United States at any point before the child’s 18th birthday. Note that this approach is not inconsistent with the definition of habitual residence found in CFR 204.303 (which applies when a U.S. citizen adopts a child from another Convention country). However, it is ultimately the role of the relevant State court to determine the residence of the prospective adoptive parent(s).

2. Q: Would the U.S. Convention case rules apply in adoption cases where a U.S. citizen is residing in a Convention country, is considered to be habitually resident in the United States in accordance with the above, and is seeking to adopt a child resident in the United States?

No. The domestic adoption laws and regulations of the U.S. State where the adoption takes place would apply.

3. Q: Do the transition procedures apply to these cases?

No. Since these cases will usually be U.S. domestic adoptions and not Convention adoptions, they are not subject to the transition provisions.

4. Q: Who may conduct home studies in these cases?

Since this is not a Convention case, the Convention rules do not apply to it.



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5. Q: What about military and other U.S. government employees stationed abroad?

By their nature, U.S. government employees assigned abroad in the military and in other U.S. government agencies are on temporary assignments. These U.S. citizens are considered to be habitually resident in the United States and thus their adoption of U.S. children will be considered to be a U.S. domestic adoption, not a Convention adoption.

6. Q: What if I am a U.S. citizen, but my spouse or partner is not?

If the U.S. Citizen prospective adoptive parent were domiciled in the United States or were to be returning to establish a domicile in the United States at any point before the child's 18th birthday, the Department would consider the case to be a domestic U.S. adoption not a Convention case.

3-28-08

